

FEB 15 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ESMERALDA LOPEZ-HERNANDEZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 07-73350

Agency No. A79-588-429

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted February 11, 2008<sup>\*\*</sup>

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

This is a petition for review from the Board of Immigration Appeals’  
 (“BIA”) July 25, 2007 order on remand vacating its March 14, 2005

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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decision with respect to the grant of 30 days of voluntary departure, and granting petitioner 60 days in which to voluntarily depart. The BIA issued the order following this court's order remanding petition for review No. 05-74973 to the BIA.

Petition for review No. 05-74973 challenged the BIA's July 28, 2005 order denying petitioner's motion to reopen so that she could renew her application for cancellation of removal and a seek new grant of voluntary departure. On August 1, 2006, this court issued a memorandum opinion dismissing the petition for review. Among other things, the court found that it lacked jurisdiction over the BIA's discretionary determination that the evidence petitioner submitted would not alter its prior discretionary determination that she had failed to establish the requisite hardship to merit cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). Following issuance of the court's August 1, 2006 decision, petitioner filed a motion for panel rehearing and rehearing en banc. That motion was pending when the court granted respondent's unopposed motion to remand the matter to the BIA so that the Board could reconsider its ruling on voluntary departure. The mandate issued in No. 05-74973 on May 25, 2007.

In this petition for review, petitioner again seeks to challenge the BIA's July 28, 2005 decision denying petitioner's motion to reopen. Respondent has moved to dismiss this petition for review on the ground that this court has already determined that it lacks jurisdiction over the denial of the motion to reopen cancellation of removal proceedings in its order dismissing petition No. 05-74973.

Petitioner opposes the motion to dismiss, asserting that the issue of this court's jurisdiction over the denial of her motion to reopen was never fully adjudicated in petition No. 05-74973 because the motion for rehearing and rehearing en banc was still pending when the matter was remanded to the BIA. However, petitioner did not oppose respondent's motion to remand on the single issue of voluntary departure or otherwise preserve her challenge to the court's August 1, 2006 decision in No. 05-74973.

The motion to dismiss is construed as a motion for summary adjudication of this petition for review. So construed, the motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, this petition for review is denied.

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All other pending motions are denied as moot. The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

**PETITION FOR REVIEW DENIED.**